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June 29, 2000



Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, SW - The Portals
Washington, D.C. 20554

Re: Ex Parte Communication: Regulatory Fees / MD Docket 00-58

Dear Ms. Salas:

Pursuant to Section 1.206 of the Commission's rules, two copies of a written ex parte communication in the above-noted proceeding are enclosed. Please associate these documents with the public record.

Sincerely yours,

Lawrence W. Secrest, III

Enclosures

*Wiley, Rein & Fielding*

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June 29, 2000

Susan H. Steiman, Office of General Counsel
Federal Communications Commission
445 Twelfth Street, SW - The Portals
Room 8-A666
Washington, D.C. 20554

Re: Regulatory Fees / MD Docket 00-58

Dear Susan:

As a follow-up to yesterday's discussion, I am enclosing an excerpt from our comments and two International Bureau decisions which make clear that Space Stations providing DBS service have been (and continue to be) subject to Part 25 technical regulations.

Sincerely yours,

Lawrence W. Secrest, III

Enclosure

cc: Ex Parte File

POST-1989 CASES \ 1999

# MCI Telecommunications Corporation For Modification of Direct Broadcast Satellite Authorization

**POST-1989 CASES \ 1999 \ MCI Telecommunications Corporation For Modification of Direct Broadcast Satellite Authorization**

**14 FCC Rcd 9966, 1999 FCC LEXIS 2718**

**(June 8, 1999)**

**POST-1989 CASES \ 1999 \ MCI Telecommunications Corporation For Modification of Direct Broadcast Satellite Authorization \ 14 FCC Rcd 9966, 1999 FCC LEXIS 2718 (June 8, 1999)**

**DA 99-1125**

**File No. 84-SAT-ML-97; New IBSF No. SAT-MOD-19970505-00039**

**Released: June 8, 1999**
**Adopted: June 8, 1999**

## MEMORANDUM OPINION AND ORDER

**By the Acting Chief, International Bureau**

**PORTER**

I. INTRODUCTION

1. By this Order, we grant in part, MCI Telecommunications Corporation's ("MCI") Application for Modification of its Direct Broadcast Satellite ("DBS") Authorization, as supplemented. [1] This Order also grants MCI's request for minor clarifications of several conditions placed on its original authorization. [2] In addition, this Order authorizes MCI to conduct limited transfer orbit and contingency telemetry, tracking and control ("TT&C") functions in the lower end of the 14.0-14.5 GHz fixed-satellite service ("FSS") uplink band. Grant of this modification request will provide MCI with the flexibility to maximize its service capacity and quality to its customers.

II. BACKGROUND

2. On December 20, 1996, MCI received an authorization to construct, launch, and operate two satellites in the DBS service at the 110 [degrees] W.L. orbital location. [3] The first satellite, MCI-F1, was authorized to operate on even-numbered channels (2-22, and 26) at 109.8 [degrees] W.L. The second satellite, MCI-F2, was authorized to operate on odd numbered channels (1-31) at 110.2 [degrees] W.L. This authorization was subject to several conditions, as discussed below. The same Order dismissed without prejudice MCI's request to conduct telemetry, tracking and control in the lower end of the 14.0-14.5 GHz band, pending MCI's submission of additional technical information regarding its TT&C functions, including International Telecommunication

Union ("ITU") Appendices 3 and 4 notice forms.

3. MCI filed an application to modify its DBS authorization, requesting permission to operate the two spacecraft anywhere within the portion of the geostationary orbital arc between 109.8 [degrees] to 110.2 [degrees] W.L. using any combination of transponder frequencies. MCI claims the requested flexibility will permit it to provide maximum channel capacity and availability over the life of the satellites. [4] MCI also requested clarification of several conditions in its initial authorization. On April 22, 1999, MCI filed a supplement to its modification application. Although it is not withdrawing its broader request for additional flexibility, MCI states that it will accept a license condition that requires it to operate channels, 27, 29, and 31 only at the 110.2 [degrees] W.L. orbital position. MCI states it will submit a further technical showing demonstrating that its flexible proposal for these three channels will not cause harmful interference to other operators, and thus, any license condition limiting operation of these channels should be lifted.

III. DISCUSSION

4. *Modification request.* In the 12.2-12.7 GHz band, the ITU Radio Regulations assign channels to administrations at certain orbital locations to provide broadcasting-satellite service ("BSS") to their countries under specified conditions. [5] In the U.S., DBS operates within this BSS allocation. Each nominal orbital location (*i.e.*, 110 [degrees] W.L.) is subdivided into two locations, 0.2 degrees East and West of the nominal location (*i.e.*, 109.8 [degrees] W.L. and 110.2 [degrees] W.L.). All orbital positions within these two locations define a "cluster." The United States is the only administration assigned channels at the 110 [degrees] W.L. cluster in the Region 2 BSS and Feeder Link Plans. In addition to MCI, DIRECTV Enterprises, Inc. ("DIRECTV") is assigned channels 28, 30 and 32 [6] and EchoStar Satellite Corporation. ("EchoStar") is assigned channel 24 at 110 [degrees] W.L. [7] Neither DIRECTV or Echostar have begun providing DBS service from these assigned locations.

5. MCI's request to operate its spacecraft anywhere between 109.8 [degrees] W.L. and 110.2 [degrees] W.L. is consistent with ITU Radio Regulations, which allow an administration to locate its satellites anywhere within a cluster at its assigned nominal orbital position, provided it obtains the agreement of administrations having assignments to space stations in the same cluster. [8] Because the United States is the only administration using channels at this location, we have authority under the ITU Radio Regulations to allow each of the three systems assigned to 110 [degrees] W.L. to locate anywhere within the cluster. While most operations at the same orbital location do not raise concerns about mutual interference, operations on adjacent channels contain overlapping frequencies that must be coordinated with each other to prevent harmful interference. The only adjacent channels assigned to different entities, to date, at the 110 [degrees] W.L. location are channels 27 through 32, with MCI assigned to channels 27, 29, and 31, and DIRECTV assigned channels 28, 30, and 32. [9] Consequently, these are the only channels that pose a potential for harmful mutual interference. MCI has not indicated it has coordinated operation of these channels with DIRECTV.

6. Accordingly, we grant MCI's request to operate its satellites anywhere within the 109.8 [degrees] W.L. and 110.2 [degrees] W.L cluster with respect to all of its assigned channels except channels 27, 29 and 31. With respect to channels 27, 29, and 31, we grant MCI's supplemental request to operate these channels at the 110.2 [degrees] W.L. orbital location only. This is the assigned position for these channels in the Region 2 BSS and Feeder Link Plans and was designed to mitigate adjacent channel interference by placing odd-numbered channels at a

maximum orbital separation from even-numbered channels within an orbital cluster. MCI's request for additional flexibility for these three channels will be addressed upon MCI's submission of a technical showing which demonstrates that operation at any point within the 109.8 [degrees] W.L. and 110.2 [degrees] W.L. orbital cluster will not cause harmful interference to other U.S. DBS licensees assigned within that cluster.

7. In addition, MCI represents in its modification application that it will operate its oddnumbered channels using right-hand circular polarization and even channels using left-hand circular polarization in accordance with the Region 2 BSS and Feeder Link Plans. Previously, MCI had been granted authority to use channel polarizations that were in opposite sense to those assigned by the Region 2 BSS and Feeder Link Plans, conditioned on MCI coordinating these non-conforming operations with other licensed systems. [10] MCI's request to modify its license to operate in accordance with the Region 2 BSS and Feeder Link Plans will mitigate the potential for interference to other U.S. licensees in the cluster. Therefore, we grant this modification request.

8. *Clarification of Conditions*. MCI's initial authorization to construct, launch, and operate two DBS satellites is subject to four conditions, three of which MCI seeks to have clarified. The first condition requires the ITU to confirm that "the operation of MCI's satellites, MCI-F1 and F2, are in conformance with Appendices 30 and 30A of the ITU Radio Regulations." [11] MCI claims that this condition cannot be satisfied because the ITU does not perform a verification function with respect to compliance with the ITU Radio Regulations. MCI asks that it not be required to obtain confirmation, but simply be required to bring its satellites, with associated feeder links, into service in accordance with the BSS Region 2 Plan set forth in Appendices 30 and 30A. [12]

9. We disagree with MCI that the ITU does not "confirm" that proposed operations are in conformance with its regulations. The ITU does determine whether other administrations are affected by a modification proposal, [13] and the ITU will examine the proposed system with respect to its conformity with the ITU Radio Regulations and the appropriate regional Plans. [14] The administration responsible for the proposed modification to the Region 2 BSS and Feeder Link Plans must coordinate and reach agreements with affected administrations before the modification can become part of the Region 2 BSS and Feeder Link Plans. However, our principal concerns about the potential interference to other systems operating in accordance with the ITU Radio Regulations are taken into account in the second condition as modified, and therefore, we remove the first condition on MCI's original authorization.

10. The second condition on MCI's authorization requires it to protect existing systems operating in accordance with the Region 2 BSS and Feeder Link Plans. Specifically, until the Region 2 BSS Plan and its associated Feeder Link Plan are modified to include the technical parameters of MCI-F1 and MCI-F2 and their associated feeder links, these satellite systems must not cause harmful interference to, and may not receive protection from, other BSS or feeder link assignments in Appendices S30 and S30A of the ITU Radio Regulations. MCI requests that this condition be deemed satisfied based on information already submitted to the Commission for inclusion in the Region 2 BSS Plan and Feeder Link Plan. According to MCI, the modification of the Region 2 BSS and Feeder Link Plans is an administrative function subject to a two-year backlog.

11. The purpose of this condition is to ensure that the MCI DBS system does not cause unacceptable or harmful interference to radiocommunication systems of other administrations, as well as to emphasize the importance of completing the Appendices S30 and S30A modification

procedures to the protection of MCI's system. Contrary to MCI's assertion, modification of the Region 2 BSS and Feeder Link Plans is not solely an administrative function. This condition is intended to convey that until the Plan modifications are finalized, the licensee is obligated to protect other radiocommunication systems -- both satellite and terrestrial -- operating in accordance with the ITU Radio Regulations. Further, there is an inherent risk involved in attempting to obtain agreements with affected administrations. Simply filing the necessary information to initiate the Plan modification procedure does not address concerns relating to potential interference.

12. The United States already has channel assignments in the Region 2 BSS and Feeder Link Plans at 110 [degrees] W.L. [15] These assignments define the amount of interference other administrations must accept from these U.S. BSS assignments. Consequently, we will modify the second condition of MCI's authorization to permit MCI to operate its satellites within the constraints of the current assignments instead of stipulating that no interference can be caused to other systems. Until the Region 2 BSS Plan and its associated Feeder Link Plan are modified to include the technical parameters of MCI-F1 and MCI-F2 and their associated feeder links, MCI's satellite systems may not cause greater interference to other BSS or feeder link assignments, or other services or satellite systems, operating in accordance with the ITU Radio Regulations, than that which would occur from the current USA Plan assignments at 110 [degrees] W.L. No protection from interference caused by radio stations authorized by other administrations is guaranteed unless and until Appendices S30 and S30A Plan modification procedures are successfully and timely completed.

13. The third condition on MCI's authorization requires it to "complete international coordination of its TT&C [tracking, telemetry, and control] functions through the ITU." According to MCI, this condition is confusing because coordinations do not take place "through" the ITU, but are accomplished directly between the operators of facilities pursuant to procedures established by the ITU. MCI suggests that this condition be recast to require that MCI "coordinate its TT&C functions, as necessary, pursuant to the procedures established in the ITU Radio Regulations, Recommendations and/or Resolutions, as applicable." We agree that coordination is conducted between Administrations and that Administrations coordinate by using the procedures provided by the ITU Radio Regulations. The ITU Radio Regulations, however, do not contain specific coordination procedures for the frequencies MCI proposes to use for on-station TT&C operations. According to ITU Rules of Procedure, [16] it is necessary to submit advance publication information to the ITU, in accordance with Article S9, and to subsequently notify use of these frequencies in accordance with Article S11. Consequently, we modify the third condition of MCI's December 1996 Authorization Order to require MCI to submit the appropriate information to the Commission to complete the ITU process for the use of its on-station TT&C frequencies in accordance with the appropriate procedures in the ITU Radio Regulations.

14. *Frequencies for transfer orbit and contingency operation TT&C.* In its application for initial authorization to construct, launch, and operate a DBS satellite, MCI requested a waiver of the Commission's rules to conduct TT&C functions in the lower end of the 14.0-14.5 GHz ("14 GHz") fixed-satellite service ("FSS") uplink band for transfer orbit operations and contingency operations. In the December 20, 1996 Authorization Order, the Bureau dismissed MCI's waiver request without prejudice, pending MCI's submission of a complete description of its TT&C functions, including completed Appendices 3 and 4 for submission to the ITU. MCI filed this information in a timely and complete manner and maintained that use of the 14 GHz frequencies would only be used for transfer orbit operations or in contingency situations while in its final

orbit and not for normal on-orbit TT&C operations. [17] MCI states that the 14 GHz frequencies are required for orbit raising operations, since the only available worldwide tracking networks are either at 14 GHz or C-band frequencies. [18] MCI adds that when on-orbit, the 14 GHz frequencies would only be used, for example, if the space station lost attitude orientation and only for the duration of the contingency.

15. The Bureau dismissed MCI's original waiver request to use the 14 GHz frequency band for transfer orbit and contingency operation TT&C because it was not in conformity with our rules and there existed a potential for harmful interference to adjacent satellite operations. In particular, we indicated that the proposed use of these frequencies for TT&C operations was not in conformity with the U.S. Table of Frequency Allocations. [19] TT&C functions for BSS satellites are commonly operated in the band edges of the frequency bands being used to provide BSS service and BSS feeder links. [20] BSS feeder links are operated in FSS allocations. [21] Although the 14 GHz band is not specifically designated for BSS feeder links, it is allocated to the FSS according to the U.S. Table of Frequency Allocations. [22] In the MCI Authorization Order, we also stated that we believed that the ITU would make an unfavorable finding regarding conformity of the proposed TT&C functions with the International Table of Frequency Allocations. [23] However, we note that the ITU has made a favorable finding in a similar situation regarding use of C-band FSS frequencies for TT&C for a BSS system. [24] **Based on these considerations and re-evaluation of our prior assessment, we now find that use of the 14 GHz band for TT&C for a BSS system is in conformity with the international and domestic Tables of Frequency Allocations. However, Section 25.202(g) of the Commission's rules requires that TT&C functions for U.S. satellites be conducted at the edges of the bands in which service is being provided.** [25] As MCI is not providing feeder uplink service within the 14 GHz band, grant of MCI's request will require a waiver of Section 25.202(g).

16. The 14 GHz frequencies MCI proposes to use are assigned for use by Canadian and Mexican fixed satellites at orbital locations adjacent to MCI's DBS orbital location. [26] MCI's original waiver request was not accompanied by a technical demonstration that harmful interference would not occur to adjacent satellite networks. We therefore dismissed this request pending the submission of such information. Subsequently, MCI notified us that it had reached agreements with the operators of nearby Canadian and Mexican satellites for the use of the 14 GHz frequencies for transfer orbit and emergency TT&C. We therefore find MCI's limited use of the 14 GHz frequencies for transfer orbit TT&C and, when in its final orbit, on a contingency (*i.e.* emergency) basis, will not cause interference to adjacent BSS systems. Accordingly, we reinstate MCI's original waiver request and grant it. We fully expect all on station TT&C to be conducted in the 17 GHz uplink band as set forth in MCI's original authorization.

## IV. CONCLUSION AND ORDERING CLAUSES

17. Based on the foregoing, we find that granting MCI's application, in part, will serve the public interest by providing MCI the flexibility to maximize service to its DBS customers. Accordingly, IT IS ORDERED, pursuant to Section 0.261 of the Commission's rules, 47 C.F.R. Sec. 0.261, that MCI Telecommunications Corporation's Application for Minor Modification and Clarification of License Conditions as supplemented on April 22, 1999, is GRANTED in part, with the following conditions: (1) MCI is authorized to operate its assigned channels, except 27, 29, and 31, at any location within the 109.8 [degrees] W.L. and 110.2 [degrees] W.L. cluster; (2) MCI is authorized to operate channels 27, 29, and 31 only at the 110.2 [degrees] W.L. orbital location; (3) The polarization used shall be in accordance with the Region 2 BSS Plans with odd

numbered channels operating with right-hand circular polarization and even numbered channels operating with left-hand circular polarization.

18. IT IS FURTHER ORDERED, that MCI Telecommunications Corporation's December 20, 1996, authorization is subject to the following modified conditions: (1) MCI shall submit within 30 days of the release of this Order any updated technical information, as necessary and as specified in Annex 2 to Appendices S30 and S30A of the ITU Radio Regulations, required by Article 4 of Appendices S30 and S30A to initiate modification of the Region 2 BSS Plan and the associated Feeder Link Plan; (2a) until the ITU Region 2 BSS Plan and its associated Feeder Link Plan are modified to include the technical parameters of MCI-F1 and MCI-F2 and their associated feeder links, these satellite systems shall not cause greater interference than that which would occur from the current USA Plan assignments at 110 [degrees] W.L. to other BSS or feeder link assignments, or other services or satellite systems, operating in accordance with the ITU Radio Regulations; (2b) No protection from interference caused by radio stations authorized by other administrations is guaranteed to MCI-F1 and MCI-F2 unless and until Appendices S30 and S30A Plan modification procedures are successfully and timely completed; (3) Within 30 days of the release of this Order, MCI shall submit any updated or additional information, as necessary, to complete the ITU process for the use of its normal, on-station TT&C frequencies (17/12 GHz) in accordance with the appropriate procedures in the ITU Radio Regulations; (4) detailed calculations shall be submitted to the Commission, as necessary, to demonstrate compliance with Annex 1 of Appendices S30 and S30A.

19. IT IS FURTHER ORDERED, that MCI's waiver request to use the 14 GHz band for transfer-orbit and contingency on-station TT&C operations, which was dismissed without prejudice in the December 20, 1996 Authorization Order, is hereby REINSTATED, and MCI's request to conduct tracking, telemetry and control functions in the lower end of the 14.0-14.5 GHz (Ku-band) fixed-satellite service uplink band (14000.4 MHz and 14004.6 MHz, specifically) for transfer-orbit operations and contingency operations while in its final orbit is GRANTED. Within 30 days of the release of this Order, MCI shall submit any updated or additional information, as necessary, to complete the ITU process for the use of the 14 GHz TT&C frequencies in accordance with the appropriate procedures in the ITU Radio Regulations.

20. IT IS FURTHER ORDERED, that this Order is without prejudice to any action the Commission may take with respect to MCI's request to modify its authorization to operate channels 27, 29 and 31 at any point within the 109.8 [degrees] W.L. to 110.2 [degrees] W.L. cluster.

Roderick K. Porter

Acting Chief, International Bureau

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**Footnotes**

1. Subsequent to the filing of this application, the Commission has authorized assignment of MCI's DBS authorizations to EchoStar 110 Corporation. *MCI Telecommunications Corporation, For Consent to Assignment of Authorization to Construct, Launch, and Operate a Direct Broadcast Satellite System Using 28 Frequency Channels at the 110 [degrees] W.L. Orbital Location*, Order and Authorization, FCC 99-109 (rel. May 19, 1999) ("*MCI Assignment Order*"). Although the modifications and conditions to MCI's DBS authorization addressed in this Order will be transferred, the assignment transaction has not been consumated. Consequently, this Order is addressed to MCI.

2. *MCI Telecommunications Corporation For Authority to Construct, Launch, and Operate a Direct Broadcast System at 110 [degrees] W.L.*, 12 FCC Rcd 12538 (1996) ("*MCI Authorization Order*").

3. *Id.* at 12538.

4. *MCI Telecommunications Corporation Application for Minor Modification and Clarification of License Conditions*, p. 2, Filed May 5, 1997, File No. 84-SAT-ML-97; New IBSF No. SAT-MOD-19970505-00039. With the use of any combination of transponder frequencies MCI will have the flexibility, within the design limitations of its satellites, to operate at higher power and maximize its channel capacity and signal quality, thereby maximizing service to its customers.

5. Appendices S30 and S30A of the ITU Radio Regulations contain the BSS assignment Plans and the associated Feeder Link Plans, respectively, for the three ITU Regions. ITU Region 2 encompasses the Americas, and therefore, includes the United States. The Plans for Region 2 are referred to as the "Region 2 BSS and associated Feeder Link Plans." Appendices S30 and S30A also contain the associated procedures to modify the Plans, and to bring them into use.

6. *United States Satellite Broadcasting Co., Inc., Consent to Transfer of Control*, DA 99-633 (rel. April 1, 1999).

7. *DirectSat Corporation, Application to Transfer Control of Direct Broadcast Satellite*, 10 FCC Rcd 88 (1995); February 25, 1999, letter from Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, to Messrs. Malet, Michalopolous, and Paul (granting *pro forma* assignment of DBS authorizations from DirectSat to EchoStar Satellite Corporation).

8. *See* Section B of Annex 7 to Appendix S30 of the ITU Radio Regulations.

9. We need not address the potential interference between MCI's channels 23 and 25 with EchoStar's channel 24 due to the recent assignment of MCI's DBS authorizations to EchoStar 110 Corporation. Among other assets, EchoStar will acquire the two satellites MCI intended to use in its DBS system. *See MCI Assignment Order. See also EchoStar Satellite Corporation, Application for Modification to Direct Broadcast Satellite Authorization and Operation Authority*, Filed April 19, 1999, requesting authorization to modify its authorization to operate Channel 24 at the 110 [degrees] W.L. orbital position in accordance with the authorizations granted to MCI and assigned to EchoStar 110.

10. *MCI Authorization Order*, 12 FCC Rcd at 12542, authorizing MCI to operate even-numbered channels using right-hand circular polarization, and odd numbered channels using left-hand circular polarization.

11. *Id.* at 12543.

12. Appendices S30 and S30A to the ITU Radio Regulations supersede Appendix 30 and 30A.

13. In the event that a system will operate beyond the terms and conditions of the Plan, an Administration may initiate the Plan "modification procedures" of Appendices S30 and S30A to include a modified frequency assignment in the Plans. *See* Article 4 of Appendices S30 and S30A of the ITU Radio Regulations.

14. *See* Article 5 of Appendices S30 and S30A.

15. Region 2 BSS and Feeder Link Plans, Article 9 of Appendix S30 and Article 10 of Appendix S30A to the ITU Radio Regulations.

16. The ITU Rules of Procedure (Edition, 1994) for Annex 5 to Appendix S30.

17. Attachment 4 to information filed by MCI's on January 21, 1997, as requested in the December 1996 Authorization Order. The specific TT&C frequencies identified are 14000.4 MHz and 14004.6 MHz.

18. C-band frequencies generally refer to the FSS allocations at 3700-4200 MHz (space-to-Earth) and 5925-6425 MHz (Earth-to-space).

19. *MCI Authorization Order*, paragraph 5.

20. That is, the band edges of the 12.2-12.7 GHz band and the 17.3-17.8 GHz band.

21. Pursuant to Section 25.201 of the Commission's rules., FSS allocations may be used for feeder links in other services. *See* also ITU Radio Regulation S1.21.

22. 47 C.F.R. Sec. 2.106.

23. *MCI Authorization Order*, paragraph 5.

24. ITU Special Section AR11/C/2687 dated April 22, 1997.

25. **47 C.F.R. Sec. 25.202(g).**

26. Pursuant to the 1988 Trilateral Agreement between the United States, Canada, and Mexico, Canada may use C

band and Ku-band frequencies at 111.1 [degrees] W.L. and Mexico may use C band and Ku-band frequencies at 109.2 [degrees] W.L. *Trilateral Agreement Regarding Use of The Geostationary Orbit Reached by Canada, Mexico and The United States*, Public Notice dated September 2, 1988.

POST-1989 CASES \ 1999

# DIRECTV Enterprises, Inc.; Application for Modification of Direct Broadcast Satellite System and for Authorization to Relocate DBS-1 Satellite to the 109.8 [degrees] W.L. Orbital Location

**POST-1989 CASES \ 1999 \ DIRECTV Enterprises, Inc.; Application for Modification of Direct Broadcast Satellite System and for Authorization to Relocate DBS-1 Satellite to the 109.8 [degrees] W.L. Orbital Location**
**1999 FCC LEXIS 4240 (September 1, 1999)**

**POST-1989 CASES \ 1999 \ DIRECTV Enterprises, Inc.; Application for Modification of Direct Broadcast Satellite System and for Authorization to Relocate DBS-1 Satellite to the 109.8 [degrees] W.L. Orbital Location \ 1999 FCC LEXIS 4240 (September 1, 1999)**
**DA 99-1781**

**File No. SAT-MOD-199990603-00062**

**Released: September 1, 1999**
**Adopted: September 1, 1999**

**ORDER AND AUTHORIZATION**

**By the Chief, Satellite and Radiocommunication Division**

**TYCZ**

**Introduction**

1. By this Order we grant DIRECTV Enterprises, Inc. ("DIRECTV") authority to effect a modification to its Direct Broadcast Satellite ("DBS") system authorization to relocate its DBS-1 satellite from 101 [degrees] W.L. and operate it at the 109.8 [degrees] W.L. orbital location. [1]

2. On August 2, 1999, DIRECTV received authority to launch and operate its DBS-1R satellite and collocate it with DIRECTV's existing system of DBS satellites at the 101 [degrees] W.L. orbital location. [2] DBS-1R is intended to replace DBS-1, which has experienced a failure of its primary spacecraft control processor ("SCP"). When the failure occurred, DBS-1 automatically switched to its back-up SCP, which has enabled DBS-1 to continue to provide DBS service. DIRECTV concluded, however, that the loss of DBS-1's primary SCP had compromised it's DBS system's ability to guarantee long-term, uninterrupted subscription service to its customers. DIRECTV, therefore, requested authority to replace DBS-1 with DBS-1R.

3. DIRECTV explains that DBS-1, despite its SCP failure, remains a valuable and useful asset, capable of providing continued DBS service. Consequently, DIRECTV proposes to relocate DBS-1 to the 109.8 [degrees] W.L. orbital location during the fall of 1999, following the successful launch and testing of DBS-1R. From this orbital location, DIRECTV says it intends to operate DBS-1 on a non-common carrier basis, as it operates its current satellite capacity at 101 [degrees] W.L., and it may sell and/or lease a portion of its capacity, also on a noncommon

carrier basis for complementary business services. However, DIRECTV says that its primary plan for DBS-1, once it is relocated, is to immediately begin providing an integrated and unprecedented variety of Spanish-language programming that will supplement its core DBS service from the 101 [degrees] W.L. orbital position. The programming transmitted from 109.8 [degrees] W.L., like that transmitted from 101 [degrees] W.L., says DIRECTV, will be received by consumers using a small earth station antenna capable of receiving DBS signals from multiple orbital locations.

**Discussion**

4. In considering DIRECTV's proposed modification application to re-locate its DBS-1 satellite to 109.8 [degrees] W.L., we must evaluate its interference potential to other DBS permittees and the radiocommunication systems of other countries. Specifically, pursuant to Section 100.21 of the Commission's rules, we must ensure that the DBS-1 satellite will be operated in accordance with Appendices S30 and S30A of the International Telecommunication Union (ITU) Radio Regulations. Annexes 1 of Appendices S30 and S30A provide the methodology and criteria for determining whether a specific satellite system might interfere with frequency assignments operated in accordance with the Region 2 broadcasting-satellite service (BSS) Plan and its associated Feeder Link Plan, [3] other satellite systems, or terrestrial services. [4]

5. DIRECTV has submitted sufficient technical information to allow evaluation of the interference potential of its satellite at 109.8 [degrees] W.L., including the information requested in Annex 2 of Appendices S30 and S30A of the ITU's Radio Regulations. [5] DIRECTV has also provided analyses demonstrating its compliance with the limits contained in Annex 1 to Appendices S30 and S30A. We have reviewed this information, and we find that the potential interference level of DIRECTV's modified system is below that allowed under Appendices S30 and S30A at the 110 [degrees] W.L. orbital location. However, because the technical parameters of DBS-1 vary from those set forth for U.S. assignments in the Region 2 BSS Plan and its associated Feeder Link Plan, [6] the Commission must request modification of the Region 2 BSS Plan and its associated Feeder Link Plan. Until the Region 2 BSS Plan and its associated Feeder Link Plan are modified to include the technical parameters of DBS-1 and its associated feeder links at 110 [degrees] W.L., DBS-1 may not cause greater interference to other BSS or feeder link assignments, or other services or satellite systems, operating in accordance with the ITU Radio Regulations, than that which would occur from the current USA Plan assignments at 110 [degrees] W.L. Furthermore, we remind DIRECTV that no protection from interference caused by radio stations authorized by other administrations is guaranteed unless and until Appendices S30 and S30A Plan procedures are successfully and timely completed. DIRECTV will be expected to provide continuing documentation, as necessary, for the international coordination of its DBS-1 network. [7]

6. For its [redacted] **(TT&C) functions, DIRECTV requests authority to use** frequencies in the [redacted] **service bands. Use of frequencies within the bands used for** service links [redacted] **is consistent with Commission rules.** [8] EchoStar Satellite Corporation and EchoStar 110 Corporation (collectively "EchoStar"), the other licensee with channels assigned at the 110 W.L. orbital location, also uses frequencies in the guardbands of the Plans for its TT&C functions. In informal comments, EchoStar submits that certain TT&C frequencies of DBS-1 overlap those of EchoStar's satellites at 110 W.L. EchoStar believes this presents the potential for harmful interference. Nevertheless, EchoStar says it "is optimistic that these issues can be resolved in the coordination process." [9] EchoStar also states that it expects DIRECTV to cooperate in avoiding interference with EchoStar's collocated satellites. [10]

DIRECTV asserts that it will coordinate with "all affected parties" and that it shares EchoStar's optimism that any interference issues can be resolved. [11] We expect both DIRECTV and EchoStar to cooperate with each other and coordinate to avoid interference at the 110 [degrees] W.L. orbital location. Given the willingness of both EchoStar and DIRECTV to coordinate with each other, and their mutual optimism that any potential interference issues can be resolved through such coordination, we will grant use of these frequencies for TT&C functions, including transfer orbit operations. The grant, however, is conditioned on coordination as necessary of this use with other potentially affected DBS licensees.

7. Based on the above considerations, we find sufficient evidence to conclude that relocating DBS-1 from the 101 [degrees] W.L. to the 109.8 [degrees] W.L. orbital location will comport fully with all applicable international interference criteria and limitations, including DIRECTV's obligation to cooperate in ensuring that any potential for harmful interference to the satellites authorized to operate at 110 [degrees] W.L. orbital location be avoided. Moreover, we find that DIRECTV's proposal to provide DBS service from this location will serve the public interest, convenience and necessity. Relocating DBS-1 at the general location of 110 [degrees] W.L. will enhance competition in the MVPD market by providing DBS service from another full-CONUS DBS orbital location. [12]

**Ordering Clauses**

8. Accordingly, pursuant to authority delegated by Section 0.261 of the Commission's rules, 47 C.F.R. Sec. 0.261, IT IS ORDERED that Application file No. SAT-MOD-199990603-00062 IS GRANTED, and DIRECTV IS AUTHORIZED to relocate the satellite designated DBS-1 at the 109.8 [degrees] W.L. orbital position in accordance with the terms, representations, and technical specifications set forth in its application.

9. IT IS FURTHER ORDERED that the application for DIRECTV's authority to relocate DBS-1 satellite to the 109.8 [degrees] W.L. location orbital location, File No. SAT-MOD-199990603-00062, IS GRANTED SUBJECT TO THE FOLLOWING CONDITIONS that: (1) untilthe ITU Region 2 BSS Plan and its associated Feeder Link Plan are modified to include the technical parameters of DBS-1 and its associated feeder links at 110 [degrees] W.L., these satellite systems shall not cause greater interference than that which would occur from the current USA Plan assignments at 110 [degrees] W.L. to other BSS or feeder link assignments, or other services or satellite systems, operating in accordance with the ITU Radio Regulations; (2) No protection from interference caused by radio stations authorized by other administrations is guaranteed to DBS-1 unless and until Appendices S30 and S30A Plan modification procedures are successfully and timely completed.

10. IT IS FURTHER ORDERED that DIRECTV shall coordinate its operations, including on-station and transfer orbit TT&C operations, with all potentially affected DBS licensees.

11. IT IS FURTHER ORDERED that this order is effective upon release.

Thomas S. Tycz

Chief, Satellite and Radiocommunication Division

International Bureau

**Footnotes**

1. In its application, DIRECTV generally refers to 110 [degrees] W.L., which it uses as shorthand references to the 109.8 [degrees] W.L. orbital location. *See* Letter from James H. Baker and Kimberly S. Reindl, Counsel for DIRECTV, to Magalie Roman Salas, Secretary, Federal Communications Commission (July 16, 1999).

2. *DIRECTV Enterprises, Inc.*. Order & Authorization, DA 99-1524 (Int'l Bureau, August 2, 1999).

3. Region 2 includes North and South America. Unless referring specifically to the Region 2 BSS Plan and its associated Feeder Link Plan, in the United States the term DBS is used interchangeably with BSS.

4. *See* International Telecommunication Union Radio Regulations, Appendices 30 and 30A.

5. Annex 2 to Appendices S30 and S30A state the basic characteristics to be furnished in notices relating to space stations in the broadcasting-satellite service.

6. Some of these varying parameters include digital modulation, lower EIRP, and the use of a shaped beam.

7. This includes, but is not limited to, the submission of any information or analyses necessary for completing the Plan modification process and coordination of the network. Modifications of the BSS Plans are expected not only to continue, but also to increase, in the future. Accordingly, DIRECTV may be required to assist the Commission in future coordination of its network with the administrations of later implemented systems.

8. ***See* 47 C.F.R. Sec. 25.202(g).**

9. Letter to Magalie Roman Salas, Secretary, FCC, from Pantelis Michalopoulos, Counsel for EchoStar (August 25, 1999).

10. *See* Comments filed by EchoStar on July 19, 1999.

11. Letters from James H. Baker and Kimberly S. Reindl, Counsel for DIRECTV, to Magalie Roman Salas, Secretary, Federal Communications Commission (July 29, 1999 and August 27, 1999).

12. Although this application is not subject to Section 100.53 of the Commission's rules, we note that the DBS-1 service area will include parts of Alaska. In addition, should DIRECTV launch a new satellite to replace DBS-1, we would expect full compliance with the Commission's geographic service requirements. *See* 47 C.F.R. Sec. 100.53(b).

### D. It is of No Consequence That DBS Space Stations Are Now Licensed Under Part 100 Rather Than Part 25.

Domestic DBS space stations are subject to space station regulatory fees even though such facilities are now licensed under Part 100—rather than Part 25—of the Commission's Rules. *See FY 2000 NPRM*, Attachment F, at 51. This fact, however, has no bearing on the question presented here. INTELSAT space stations are not now, and never were, within the ambit of Part 25 of the Commission's Rules. Domestic DBS space stations, in contrast, were licensed and regulated under Part 25 in 1993, when Section 9 was enacted.

At that time, both domestic *and* international satellites were licensed under Part 25 of the Commission's Rules. Accordingly, DBS satellites were required to pay the same regulatory fees imposed on all other geostationary satellite space stations licensed under "47 CFR Part 25." *See Public Notice No. 43536, Space and Earth Station Regulatory Fees*, 75 Rad. Reg. 2d (P&F) 562, at 2 n.1 (June 20, 1994) (noting that Section 9 fees must be paid in connection with "*[d]omestic and international satellites*, positioned in orbit to remain approximately fixed relative to the earth, authorized to provide communications between satellites and earth stations on a common carrier or private carrier basis *in accordance with Section 25.120(d)*") (citing 47 C.F.R. § 25.120(d)) (emphasis added); see also *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, 10 FCC Rcd 13512, ¶ 108 (1995) ("Geosynchronous space stations are *domestic and* international satellites positioned in orbit to remain fixed relative to the earth. *They are authorized under Part 25 of the Commission's Rules* to provide communications between satellites and earth stations on a common carrier and/or private carrier basis.") (emphasis added).

In December, 1995, the FCC for the first time separated the space station licensing procedure for domestic DBS satellites from the licensing procedure applicable to other geostationary space stations. *See Rules and Policies for the Direct Broadcast Satellite Service*, 11 FCC Rcd 9712 (1995), *aff'd, DirecTV v. FCC*, 110 F.2d 816 (D.C. Cir. 1997) (enacting 47 C.F.R. §§ 100.17 *et seq.*).[8] Because no one ever suggested that this ministerial change in the FCC's numerology could possibly relieve licensed DBS satellites of the regulatory fee obligation that Congress had imposed upon them by statute two years earlier, the FCC simply noted in every subsequent annual regulatory fees order that the statutory term "Space Stations (per operational station in geosynchronous orbit) (47 CFR Part 25) also includes Direct Broadcast Satellite Service (per operational station) ( 47 CFR Part 100)." *Assessment and Collection of Regulatory Fees For Fiscal Year 1996*, 11 FCC Rcd 18774, Appendix E (1996), *vacated in other respects*, *COMSAT Corp. v. FCC*, 114 F.3d 223 (D.C. Cir. 1997); *accord FY 2000 NPRM*, Attachment F, at 51 (same).

Thus, Congress clearly always intended for space station regulatory fees to apply to domestic DBS satellites. And, of course, such fees *have* always applied to such satellites. In both of these respects, DBS satellites stand in contradistinction from INTELSAT satellites.

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[8] As early as 1982, the Commission created Part 100 and had codified in that Part certain rules applicable to the DBS service. *See Inquiry into the Development of Regulatory Policy In Regard to Direct Broadcast Satellites*, 90 FCC 2d 676 (1982), *recon. denied*, 94 FCC 2d 741 (1983), *vacated in part, National Ass'n of Broadcasters v. FCC*, 740 F.2d 1190 (D.C. Cir. 1984). Until 1995, however, these rules did not encompass the licensing of space stations, which remained within the purview of Part 25.